

OFR Recognition Applications – Enhanced disclosures regarding consumer redress schemes and the potential lack of access to FSCS and FOS

The new COLL rules for the OFR, effective from 31 July 2024, will require the prospectus of an OFR recognised scheme to contain the same information as the prospectus of a UK authorised fund to the extent this is compatible with the basis of home state approval (COLL 9.5.5R). Specifically, the prospectus must include disclosures relating to whether consumer redress schemes are available in the UK and overseas (COLL 9.5.6R).

Rule requirements

COLL 9.5.6 R requires the operator of an OFR recognised scheme to ensure that the prospectus of the scheme:

- (1) explains how investors in the United Kingdom can make a complaint about the scheme, its operator or its depositary;
- (2)(a) explains whether the activities of the operator and depositary of the scheme are covered by the Financial Ombudsman Service and the compensation scheme; and
(b) where they are not covered, contains a clear warning explaining that a UK investor may not be able to seek redress under the UK regulatory system for a complaint, or compensation for a financial loss suffered as a result of the operator or depositary being unable to meet their liabilities to unitholders;
- (3) explains whether or not an investor in the United Kingdom has the right to access:
 - (a) an alternative dispute resolution mechanism in the Home State(s) of the scheme, its operator or its depositary in order to resolve a complaint; or
 - (b) a compensation scheme in the Home State(s) of the operator or the depositary that can pay compensation to unitholders for losses incurred where those persons are unable to meet their liabilities to unitholders; and
- (4) explains, if the investor has the rights described in (3), how they may be exercised, including how further information may be obtained.

Suggested formats for disclosure

In order to assist fund operators, we have provided some example disclosures that you may wish to consider using. The wording is intended to be adaptable to the specific redress arrangements that may be available to retail investors in each member state of the EEA in which a UCITS, its management company or its depositary is established and authorised. However, to avoid excessive complexity we have assumed that a depositary will be established and authorised in the same member state as the UCITS for which it acts. If you are to use the wording, you should ensure that it accurately reflects the way the fund is operated.

The wording focuses on two scenarios based on location of the management company and UCITS:

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Scenario 1 – UCITS / management company / depositary all established and authorised in same member state

1.1 This fund is domiciled in *{insert country name}* and is authorised by *{insert regulator name}*. The fund is recognised in the UK under the Overseas Funds Regime but is not a UK-authorized fund.

1.2 UK investors should be aware that if they invest in this fund, they [will not / may not] be able to refer a complaint against its management company or its depositary to the UK's Financial Ombudsman Service. Any claims for losses relating to the management company or the depositary will not be covered by the Financial Services Compensation Scheme, in the event that either person should become unable to meet its liabilities to investors.

1.3 [insert option A, B, C or D below as appropriate]

Option A – no / limited access to either an ADR mechanism or a compensation scheme outside the UK

A UK investor will be able to make a complaint to the fund and its management company, but [will not / may not] have a right to access any independent redress mechanisms in *{insert country name}*

Option B – access to an ADR mechanism outside the UK but not to a compensation scheme

A UK investor will be able to make a complaint to the fund and its management company, and [some / all] investors will have a right to access the alternative dispute resolution scheme in *{insert country name}*. A UK investor [will not / may not] have a right to access a compensation scheme in *{insert country name}* in the event that either the fund's management company or the depositary should become unable to meet its liabilities to investors.

Option C – access to a compensation scheme outside the UK but not to an ADR mechanism

A UK investor will be able to make a complaint to the fund and its management company, but [will not / may not] have a right to access an alternative dispute resolution scheme in *{insert country name}*. [Some / all] UK investors will have a right to access the compensation scheme in *{insert country name}* in the event that either the fund's management company or the depositary should become unable to meet its liabilities to investors.

Option D – access to both an ADR mechanism and a compensation scheme outside the UK

A UK investor will be able to make a complaint to the fund and its management company, and [some / all] investors will have a right to access the alternative dispute resolution scheme in *{insert country name}*. [Some / all] UK investors will have a right to access the compensation scheme in *{insert country name}* in the event that either the fund's

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management company or the depositary should become unable to meet its liabilities to investors.

1.4 UK investors may contact *{name of facilities agent}* which will provide details on request of how to make a complaint, and what rights if any are available to them under an alternative dispute resolution scheme or a compensation scheme.

Scenario 2 – UCITS management company established and authorised in a different member state to the state in which the UCITS is established and authorised.

2.1 This fund is domiciled in *{insert country name}* and is authorised by *{insert regulator name}*. The fund is recognised in the UK under the Overseas Funds Regime but is not a UK-authorized fund. The fund is managed by *{insert name of management company}* which is domiciled in *{insert country name}* and is authorised by *{insert regulator name}*.

2.2 UK investors should be aware that if they invest in this fund, they [will not / may not] be able to refer a complaint against its management company or its depositary to the UK's Financial Ombudsman Service. Any claims for losses relating to the management company or the depositary will not be covered by the Financial Services Compensation Scheme, in the event that either person should become unable to meet its liabilities to investors.

2.3 [insert option A, B, C or D below as appropriate]

Option A – no / limited access to either an ADR mechanism or a compensation scheme outside the UK

A UK investor will be able to make a complaint to the fund and its management company, but [will not / may not] have a right to access any independent redress mechanisms in *{insert country names}*

Option B – access to an ADR mechanism outside the UK but not to a compensation scheme

A UK investor will be able to make a complaint to the fund [and the management company], and [some / all] investors will have a right to access the alternative dispute resolution scheme(s) in *{insert country name(s)}*. A UK investor [will not / may not] have a right to access a compensation scheme in *{insert country name(s)}* in the event that either the fund's management company or the depositary should become unable to meet its liabilities to investors.

Option C – access to a compensation scheme outside the UK but not to an ADR mechanism

A UK investor will be able to make a complaint to the fund [and the management company], but [will not / may not] have a right to access an alternative dispute resolution scheme in *{insert country name(s)}*. [Some / all] UK investors will have a right to access the compensation scheme in *{insert country name(s)}* in the event that either the fund's

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management company or the depositary should become unable to meet its liabilities to investors.

Option D – access to both an ADR mechanism and a compensation scheme outside the UK

A UK investor will be able to make a complaint to the fund [and the management company], and [some / all] investors will have a right to access the alternative dispute resolution scheme in {insert country name(s)}. [Some / all] UK investors will have a right to access the compensation scheme in {insert country name(s)} in the event that either the fund's management company or the depositary should become unable to meet its liabilities to investors.

2.4 UK investors may contact {name of facilities agent} which will provide details on request of how to make a complaint, and what rights if any are available to them under an alternative dispute resolution scheme or a compensation scheme.

Procedures for making the disclosures

We have previously shared the text of these disclosures with the national competent authorities (NCAs) of certain key EEA jurisdictions and discussed together the likely scenarios for a fund operator to include them in fund documentation. However, we cannot give specific information or advice about the requirements and processes of each EEA NCA.

We envisage that these disclosures will be contained in either the main body of the fund prospectus, an addendum to the prospectus, or a UK supplementary document.

If the addition of these disclosures to any of the above documents requires approval from the NCA responsible for authorising and supervising the fund, this approval must be applied for and obtained **before** you can make your OFR application to the FCA. Please ensure you factor this in to your application planning.

1. Adding the redress disclosures as part of a wider set of changes to the prospectus

Home state regulatory approval required?

It is our understanding that approval by the NCA of the fund's home state will be required in this circumstance. Therefore, you need to ensure that you have applied for and received such approval before making an OFR application to the FCA.

2. Changing the prospectus solely to add the redress disclosures

Home state regulatory approval required?

It is our understanding that approval by the NCA of the fund's home state will be required in this circumstance. Therefore, you need to ensure that you have applied for and received such approval before making an OFR application to the FCA.

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3. Including the redress disclosures in an addendum to the prospectus

Home state regulatory approval required?

It is our understanding that approval by the NCA of the fund's home state is likely to be required in this circumstance. You should check with the relevant NCA to ascertain the position. If such approval is required, you need to ensure that you have applied for it and received it before making an OFR application to the FCA.

4. Including the redress disclosures in a supplementary document for UK investors

Home state regulatory approval required ?

It is our understanding that approval by the NCA of the fund's home state in this circumstance may be subject to a 'fast-track' approval procedure, or may not be required at all. You should check with the relevant NCA to ascertain the position. If such approval is required, you need to ensure that you have applied for it and received it before making an OFR application to the FCA.